

IN THE MATTER OF MERCHANT MARINER'S DOCUMENTS
AND ALL OTHER SEAMAN'S DOCUMENTS Z-1152025
Issued to: Walter G. FERNANDES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1771

Walter G. FERNANDES

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 11 March 1968, an Examiner of the United States Coast Guard at New York, N. Y. suspended Appellant's documents for two months plus four months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an officers' bedroom steward on board SS BRASIL under authority of the document above captioned, on or about 28 November 1967, Appellant wrongfully took six new shane waitress uniforms, property of the vessel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of BRASIL and the testimony of two witnesses.

In defense, Appellant offered in evidence his own testimony and that of another crewmembers of the vessel.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of two months plus four months on twelve months' probation.

The entire decision was served on 11 March 1968. Appeal was timely filed on 27 March 1968. Although given several months to add to his initial notice of appeal, Appellant has not done so, nor has he complied with the Examiner's order.

FINDINGS OF FACT

On 28 November 1967, Appellant was serving as an officers'

bedroom steward on board SS BRASIL and acting under authority of his document while the ship was in the port of Buenos Aires, Argentina.

On that date Argentinian customs officials found in Appellant's possession six new waitress uniforms, ship's property, which Appellant's was not authorized to have.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the finding of the Examiner is too severe and that it was contrary to the evidence.

APPEARANCE: Rassner & Rassner, New York, N. Y., by Ernest Rassner, Esq.

OPINION

I

The first part of Appellant's contention must be rejected out of hand. "Findings" by an examiner cannot be "too severe". Only an order can be too severe.

II

The argument that the finding is contrary to the evidence is construed, for Appellant's benefit, as meaning that the findings are not supported by substantial evidence. They are.

One of the witnesses upon whose testimony the Examiner relied accompanied the Argentinian officials who searched the ship and found the ship's property in Appellant's possession. Another such witness had identified the material as ship's property which Appellant was not entitled to have in his possession.

Absent inherent implausibility, this is substantial evidence and supports the Examiner's findings.

III

A troublesome thing about the specification as found proved is the presence of the word "shane" in the description of the uniforms. The Examiner does not comment upon it. "Shane" I take notice, (because it is not essential to decision of the case) is a brand name for uniforms. If the brand name was a means of identifying the property as ship's property it was a matter of evidence and need not have been pleaded. As pleaded, however, it is misleading in that it appears to import a certain kind of

material, like silk. Even if it were such a material it need not have been pleaded because it would affect the gravity but not the nature of the misconduct.

The flaw found here is not prejudicial, but is of a type to be avoided.

ORDER

The order of the Examiner dated at New York, N. Y. on 11 March 1968, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26 day of JUNE 1969.

INDEX (FERNANDES)

Charges and Specifications

Extraneous material in specification misleading but not prejudicial

Matters in aggravation not to be pleaded

Mere evidence not to be pleaded

Specification not to contain brand name of article allegedly stolen

Findings of Fact

Based on substantial evidence